

around the beginning or middle of XXXXXXXXXXXXXXXXXXXXXXXX school year. Student A said he reported the racial slurs to his teachers numerous times, but the teachers told him not to worry about the slurs and to stay away from Student B. Student A said he initially did not report Student B's racial harassment to the Principal because he did not think the Principal would do anything about the slurs. Student A told OCR that on XXXXXXXXXXXXXXXXXXXX, the Principal met with him to discuss Student B's report that Student A was bothering him and Student CXXXXXXXXXXXXXXXXXXXXX. At this meeting Student A decided to report Student B's racial harassment to the Principal.

During the XXXXXX school year, Student A and Student B had one class together, XXXXXXXXXXXXXXXXXXXXXXXX.

Facts

The Principal told OCR that after school on XXXXXXXXXXXXXXXXXXXX, Student B and Student C told him that Student A had been bothering them, including that same day when Student A and Student D followed them XX. The Principal told Student B and Student C that he would look into their complaint.

The Principal reviewed a video of the surveillance footage of the XXXXXXXXXXXXXXXXXXXX incident. He explained to OCR that Student B was having what appeared to be a verbal altercation with Student A, but he could only see Student A's back and could not hear what the two students were saying to each other.

On XXXXXXXXXXXXXXXXXXXX, the Principal met separately with Student A and Student B to discuss the XXXXXXXXXXXXXXXXXXXXXXXX incident, show each student the video, and ask each student to describe the incident. The Principal told OCR, and Student A confirmed, that during their XXXXXXXXXXXXXXXXXXXX meeting Student A told the Principal that Student B called him the n-word during the parking lot incident.

Student A told OCR that, during their XXXXXXXXXXXXXXXXXXXX meeting, the Principal said that if Student B called him a racially offensive name there was no harassment XXXXXXXXXXXXXXXXXXXXXXXX. The Principal advised OCR, although he and Student A discussed racial slurs, he did not make this comment to Student A. The same day the Complainant called the Principal to discuss the Principal's handling of the XXXXXXXXXXXXXXXXXXXXXXXX incident. The Complainant said he wanted Student B disciplined for using a racial slur. In addition, the Complainant advised the Principal that Student A XXXXXXXXXXXXXXXXXXXXXXXX. During the call, the Principal informed the Complainant that his investigation XXXXXXXXXXXXXXXXXXXX incident was not complete and that he was referring the investigation of the incident to other District administrators because XXXXXXXXXXXXXXXXXXXXXXXX. The Principal told OCR he took notes of his meetings

with Student A and Student B on note pads that he keeps on his desk in his office but could not locate the notes.¹

The District's written narrative states that the Principal recused himself from the investigation of the XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX incident and referred it to the District's Superintendent and the Director of Curriculum and Instruction (Director). The District and the Complainant told OCR that the District did not offer Student A support services and Student A and Student B continued to attend the one class they had together with no changes to their schedules.

The Director said the Superintendent told him to investigate whether Student B directed a racial slur at Student A on XXXXXXXXXXXXXXXXXXXXXXX. He was not was not told to and did not investigate other racial incidents that occurred between the two students.

The Director, who is not one of the District's compliance officers, told OCR that he did not have any training on conducting investigations of racial harassment. He did not interview Student A during the investigation. On XXXXXXXXXXXXXXXXXXXXXXX, the Director interviewed Student B to get his account of the XXXXXXXXXXXXXXXXXXXXXXX incident and Student B denied calling Student A a racially offensive name. The Director did not contact XXXXXXXXXXXXXXXXXXXXXXX and did not ask Student A or Student B if they could identify any witnesses to the XXXXXXXXXXXXXXXXXXXXXXX incident.

The Director told OCR that he reviewed the video of the XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX incident and, based on the video, identified potential witnesses to interview about the alleged racial slur. The Director interviewed Student C and Student D who, XXXXXXXXXXXXXXXXXXXXXXX incident, were standing near Student A and Student B and approximately six to eight students and XXXXXXXXXXXXXXX worker, who were in the area during the XXXXXXXXXXXXXXX incident. He asked each of them if they had overheard a student using a racial slur. Student D told the Director that he heard Student B use the n-word towards Student A. According to the Director, the other interviewees told the Director they had not heard anyone use a racial slur. The Director told OCR he took notes of the interviews that he conducted but was not certain if he could locate them. Additionally, the Director said he did not preserve the video surveillance footage and did not prepare a written investigative report or other formal documents related to his investigation.

According to the District's narrative Student A and Student B XXX.² However, the Director told OCR based on the interview he conducted with Student D, he and the Superintendent determined that Student B racially harassed Student A on XXX by using a racial slur and that

¹ The Principal is one of the District's compliance officers. The Principal and the other District compliance officer told OCR they did not receive any training on conducting investigations of racial harassment.

² The Principal told OCR Student B XXX.

Student B XXXXXXXXXXXXXXXXXXXXXXXXXX. The Director did not advise Student A XXXXXXXXXXXXXXXXXXXXXXXXXX of the results of his investigation. He told OCR that he thought the Superintendent would contact Student A's XXXXXXXXXXXXXXXXXXXXXXXXXX. The Director said he called Student B's XXXXXXXXXXXXXXXXXXXXXXXXXX and told him that Student B XXXXXXXXXXXXXXXXXXXXXXXXXX. The Principal told OCR it was his understanding that Student A and Student B XXXXXXXXXXXXXXXXXXXXXXXXXX.

Student A advised OCR that he told Teacher A about other incidents of Student B using racial slurs. Teacher A told OCR that Student A did not report any racial slurs to her and said she would recall and take such a report very seriously. Teacher A told OCR that when a District staff member observes racial harassment, or receives a report of harassment, the staff member is required to notify the school administration by submitting a bullying and harassment reporting form.

The Principal and Teacher A told OCR that during the annual teacher's institute at the beginning of the school year, the school administrators go over the bullying and harassment reporting form with the staff. The District provided information and attendance logs on training that staff received on discrimination and harassment generally. However, administrators and staff do not receive training regarding the District's nondiscrimination and harassment policies and procedures.

The District's narrative stated that during the last five years it addressed six incidents of race-based discrimination at the high school and disciplined six students; however, it did not provide OCR any documents detailing the investigations that were conducted or discipline administered.

Applicable Legal Standards

The Title VI regulation, at 34 C.F.R. § 100.3, prohibits discrimination on the basis of race. The regulation implementing Title VI, at 34 C.F.R. § 100.3(a), states that no individual may be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination on the basis of race, color or national origin under any program or activity that receives Federal financial assistance from the Department.

Racial harassment that creates a hostile environment is a form of discrimination prohibited by Title VI. Racial harassment can be verbal, nonverbal, or physical in nature. Racial harassment of a student creates a hostile environment if the conduct is so severe, persistent, or pervasive that it denies or limits a student's ability to participate in or benefit from the recipient's program or activities. If a racially hostile environment existed and the recipient had notice of the hostile environment, the recipient must respond adequately to address the hostile environment. The school is responsible for remedying the effects of the harassment on the student, as well as for ending the harassment and preventing its occurrence.

OCR considers the totality of the circumstances to determine whether a hostile environment has been created (i.e., whether the harassing conduct is sufficiently severe, persistent or pervasive

that it interferes with or limits a student’s ability to participate in or benefit from the school’s program). These circumstances include the context, nature, scope, frequency, duration, and location of the harassing incidents, as well as the identity, number, and relationships of the persons involved. OCR considers the conduct in question from both an objective perspective and the subjective perspective of the alleged victim of harassment.

OCR enforces the requirements of Title VI consistent with the requirements of the First Amendment of the U.S. Constitution. The laws that OCR enforces protect students from discrimination but are not intended to restrict the exercise of protected speech in violation of the First Amendment.

Conclusion and Resolution Agreement

OCR determined that it is appropriate to resolve the complaint allegation because OCR has identified concerns that can be addressed through a resolution agreement. In particular, OCR has concerns that the District failed to appropriately investigate Student A’s report that Student B used a racial slur toward Student A on XXXXXXXXXXXXXXXXXXXXXXXXXXXX and did not determine if there had been other incidences of alleged racial harassment of Student A. OCR also has concerns that the District has not provided training to staff and administrators on the District’s nondiscrimination and harassment policies and procedures, has not trained administrators on conducting racial discrimination and harassment investigations pursuant to these policies and procedures, and failed to keep sufficient records for OCR to assess the District’s compliance with Title VI.

The attached Resolution Agreement is fully aligned with the complaint allegation. It requires the District to:

- provide individual relief to Student A in the form of XXXXXXXXXXXXXXXXXXXXXXXXXXXX, XXXXXXXXXXXXXXXXXXXXXXXXXXXX;
- train District staff on the District’s nondiscrimination and harassment policies and on investigation techniques;
- provide training to students at XXXXXXXXXXXXXXXXXXXXXXXXXXXX on the District’s nondiscrimination and harassment policies; and
- take steps to track and maintain data concerning incidents of racial harassment and discrimination involving District students sufficient to determine Title VI compliance.

The letter sets forth OCR’s determination in an individual OCR case. This letter is not a formal statement of OCR policy and should not be relied upon, cited, or construed as such. OCR’s formal policy statements are approved by a duly authorized OCR official and made available to the public.

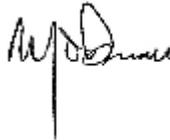
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Please be advised that the District may not harass, coerce, intimidate, or discriminate against any individual because he or she has filed a complaint or participated in the complaint resolution process. If this happens, the individual may file another complaint alleging such treatment. A complainant may file an action in court whether or not OCR finds a violation.

Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records upon request. In the event that OCR receives such a request, OCR will seek to protect, to the extent provided by law, personally identifiable information, which, if released, could reasonably be expected to constitute an unwarranted invasion of privacy.

OCR wishes to thank the District, and particularly you and Mr. Mundorf, for your cooperation and courtesy during OCR's investigation. If you have any questions about this letter, you may contact Shawn Peters, Attorney, at 312-730-1508 or shawn.peters@ed.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Dawn R. Matthias". The signature is stylized with a large initial "D" and "M".

for

Dawn R. Matthias
Team Leader

Enclosure